

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION FIVE**

**CHESTERTOWN FOODS, INC.
Employer**

and

Case 5-RC-15930

**UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 27
Petitioner**

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

On February 7, 2006, the Petitioner filed a Request for Review of my Decision and Direction of Election that issued in this matter on January 24, 2006. Petitioner asserts that I erred by failing to find that the Employer and two of its contract labor suppliers, Asian Connections and G.M.M., are a single employer. I am hereby treating Petitioner's Request for Review as a Motion for Reconsideration solely with regard to the single employer issue raised therein.

ISSUE

The sole issue in this supplemental Decision is whether Chestertown Foods, Inc., hereafter Chestertown or the Employer, and Asian Connections and G.M.M. constitute a single employer.

CONCLUSION

For the reasons that follow in this supplemental decision, and after careful reconsideration of the totality of the record evidence and the Union's and Employer's respective factual and legal positions as stated in their post-hearing briefs including the Union's brief in support of its Request for Review, I find that Chestertown is not a single employer with either,

Asian Connections or G.M.M. Accordingly, I reaffirm the exclusion of all contracted employees from the unit I found appropriate in my initial Decision and Direction of Election.

SINGLE EMPLOYER

To determine whether apparently separate entities constitute a single employer, the Board looks to the degree of their: (1) interrelation of operations; (2) centralized control of labor relations; (3) common management; and (4) common ownership or financial control. *Radio and Television Broadcast Technicians Local Union 1264 v. Broadcast Service of Mobile, Inc.*, 380 U.S. 255 (1965); *South Prairie Construction Company v. Local 627 International Union of Operating Engineers*, 425 U.S. 800 (1976); *Parklane Hosiery Co., Inc.*, 203 NLRB 597, 612 (1973). The Board has held that interrelation of operations, centralized control of labor relations, and common management, are the most significant factors and that centralized control of labor relations is particularly important because it tends to establish the requisite degree of interrelation of operations. *RBE Electronics of S.D., Inc.*, 320 NLRB 80 (1995); *Hydrolines, Inc.*, 305 NLRB 416 (1991); and *Mercy Hospital of Buffalo*, 336 NLRB 1282 (2001). All four factors need not be present for a finding of single employer status. *Hydrolines* at 416. The quintessence of single employer status is the absence of arms-length transactions. *NLRB v. Browning-Ferris Industries of Pennsylvania, Inc.*, 691 F.2d 1117, 1122 (3rd Cir. 1982) (internal citations omitted).

THE RECORD EVIDENCE

Interrelation of Operations

The evidence in the record establishes that the operations of Chestertown, Asian Connections, and G.M.M. are related only to the extent and degree required for the contracted production workers to perform the production work required by Chestertown. The contracted

production workers are trained how to de-bone the chicken by Chestertown's trainer, Doris Demby. The contracted production workers are held to the same quality standards as the Chestertown production employees. They wear the same white smocks as Chestertown production employees, and they utilize the same cafeteria and restrooms as the Chestertown production employees. But the interrelation of operations ends here.

The evidence establishes that it is Chestertown's business to process chicken meat; it is Asian Connections' and G.M.M.'s business to screen, hire, supervise, and compensate employees to work at other companies, including Chestertown. Asian Connections' and G.M.M.'s contracts with Chestertown are not exclusive. Each is free to contract with other businesses besides Chestertown to provide those other businesses with a supplemental labor force. Asian Connections, Chestertown, and G.M.M. have different addresses from one another: Asian Connections is located in Middleton, Delaware; Chestertown is located in Chestertown, Maryland; and G.M.M. is located, or based, in Long Island City, New York. Except for drug testing conducted by Chestertown, Asian Connections and G.M.M. screen their own applicants. Applicants for employment with Chestertown apply at its facility. Most, if not all, applicants for employment with Asian Connections and G.M.M. apply at their respective offices, not at Chestertown's facility. Asian Connections and G.M.M. have sole authority to decide who to hire, how to compensate them, and how to discipline them. In particular, while Chestertown supervisors communicate and advise Asian Connection and G.M.M. line leaders about the quality of their employees' work, all discipline is decided and meted out by the contractors, and not by Chestertown. Indeed, the independence and retention of authority by the contractors is supported by their respective "Hold Harmless Agreements," Employer's Exhibits 2 and 3. Both Agreements expressly provide that the contractors will test and hire their own employees;

provide compensation for their own employees, and be responsible for all recordkeeping, tax withholdings, and compliance with all other applicable laws with respect to their employees.

In support of the limited degree and extent of interrelation of operations, some specific comparisons and contrasts between Chestertown production employees and the contracted employees are established by the record. Chestertown employees utilize time cards that are swiped or punched to record their presence and their hours, while contracted employees' attendance and hours of work are recorded on paper by the contract leaders. The contract leaders report these numbers to Chestertown's production clerk. Chestertown employees are on Chestertown's payroll and are paid by checks by Chestertown; contracted employees are not on Chestertown's payroll and are paid in cash directly by the contractors. Each contractor submits weekly invoices to Chestertown listing the number of persons who reported for work and the number of hours they worked. Chestertown confirms these numbers by checking them against those reported by the contract leaders to Chestertown's production clerk. Chestertown has no knowledge of the contracted employees' wage rates; Chestertown only knows what it pays to the contractors. Chestertown employees receive as benefits paid holidays, paid vacations, group health insurance, and a 401(k) plan provided by Chestertown; Chestertown provides no benefits to the contracted employees and has no knowledge of what benefits, if any, are provided to them by Asian Connections or G.M.M. Chestertown has no influence over the pay and benefits of the contracted employees. Chestertown employees provide their own transportation to work; contracted employees are transported by vans by Asian Connections and G.M.M. to Chestertown. Chestertown employees are directly supervised by Chestertown supervisors and managers; contracted employees are directly supervised by their respective line leaders.

Centralized Control of Labor Relations

As set out and discussed above, there is no centralization of labor relations or personnel relations other than is necessary to enable the contracted production employees to perform the production work at the level of quality desired by Chestertown. With respect to personnel matters unrelated or tangential to performance, Michelle Christopher is the human resource representative for Chestertown. She and her office are responsible for personnel matters which concern Chestertown employees. There is no record evidence that she, or anyone else from Chestertown, is involved with personnel matters that concern the Asian Connections or G.M.M. employees. As noted above, disciplinary decisions concerning contracted employees are made and communicated by Asian Connections or G.M.M.

Common Management & Common Ownership/Financial Control

The record does not establish any common management or common ownership/financial control whatsoever. Asian Connections and G.M.M. have their own leaders who directly supervise their employees.

The Union did not seek to adduce the identity or names of the officers and shareholders of Chestertown, although the record is replete with the names and identities of Chestertown's managers and supervisors. The "Hold Harmless Agreement" between Chestertown and Asian Connections was signed by Laird for Chestertown and by Eva Goodsell for Asian Connections. Goodsell is the owner of Asian Connections. The "Hold Harmless Agreement" between Chestertown and G.M.M. is signed by Laird for Chestertown and by William Tam, Jr. for G.M.M. William Tam, Jr. is a son of the owners of G.M.M. There is no assertion, and the record contains no evidence, that Goodsell or Tam are managers of Chestertown or have any ownership or financial interest in Chestertown.

THE UNION'S ARGUMENT

The Union's argument may be distilled down to its assertion that Asian Connections, G.M.M., and Chestertown are single employers because there is an absence of arms' length transactions between them. In support of its contention, the Union points to facts in the record which show, in its view, sufficient degree of interrelation of operations given the mixing of contracted employees with Chestertown employees and common training and standards of work performance. The Union also points to various aspects of Chestertown's "Hold Harmless Agreements" including the asserted absence of adequate consideration, and absence of specific rights and obligations such as work to be performed and compensation.

I am not persuaded by the Union's facts and arguments, which I find outweighed by the preponderance of the record evidence as set out above. The evidence establishes a limited interrelation of operations between Chestertown employees and Asian Connections and G.M.M. Chestertown production employees and contracted production employees are interspersed, work together, and are subject to the same quality standards set by Chestertown.

The "Hold Harmless Agreements" expressly list consideration of one dollar. While that nominal consideration may lend itself to a conclusion that less than arms' length transactions are present, as the Union points out, the agreements are clearly only "Hold Harmless Agreements." It simply does not follow as a matter of law or logic that because of the nominal consideration, the Agreements are illusory. Moreover, in all other respects, the express provisions of the Agreements clearly establish the independence of the contractors separate and distinct from Chestertown, and the contractor's responsibility to Chestertown concerning the contracted employees.

Accordingly, I find that the record evidence does not support a finding that Chestertown, Asian Connections, and G.M.M. constitute a single employer, and I reaffirm the exclusion of all contracted employees from the unit I found appropriate in the January 24, 2006 Decision and Direction of Election.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on February 24, 2006. The request may not be filed by facsimile.

(SEAL)

/s/Wayne R. Gold

Dated: February 10, 2006

Wayne R. Gold, Regional Director
National Labor Relations Board, Region 5
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